IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,

JAIPUR BENCH, JAIPUR.

D. B. CIVIL WRIT PETITION NO. 33/ 1982.
Ram Gopal and Ors. Versus State of Rajasthan.

Date of Judgment: 20th September, 2006

PRESENT

Hon'ble Chief Justice S. N. Jha
Hon'ble Mr. Justice R. S. Chauhan

Mr. Paras Kuhad, for the Petitioners
Mr. G. S. Gill, Addl. Advocate General for the State.

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BY THE COURT : (Per R. S. Chauhan J):

REPORTABLE

Sentinels of our past, repository of our culture and heritage, forts and palaces dot the hills and desert of Rajasthan. One such fort is the fort of Chomu, a town situated thirty-three kilometers from Jaipur. Scion of the royal family of Jaipur state, the Nathawats started the construction of the fort in the 17th century, and extensively enlarged it in the 18th century. The fort houses a palace complex and the fortress walls (“the Parkota”) and a ditch (“the khai”). The fort is the bone of contention between the petitioners and the state. Vide Notification dated 28-3-78, published on 8-4-78 in the Rajasthan Gazette, the State had declared the fort to be a “protected monument” under Section 3 (4A) of the Rajasthan Monuments,

Archaeological Sites and Antiquities Act, 1961 (henceforth to be referred to as the State Act, for short). The petitioners are challenging the validity of the said notification. They are also challenging the letter dated 16-9-81, whereby the objections filled by the petitioners against the said notification were rejected by the State.

This case has had a checkered history. On 7-12-1972, the petitioners purchased the said fort, through five registered sale deeds, from the erstwhile royal family of Chomu. Subsequently, the petitioners rented out part of the fort to Shri Lakda Dal Mill, a partnership firm for founding its Dal Mill within the fort. The firm established not only a factory in the fort, but also used it for the purposes of storerooms, offices and for residential accommodations. On 7-2-1973, the Secretary of the Congress Committee, Chomu submitted a complaint to the then Chief Minister claiming that the fort had been sold at a nominal rate and the premises were being misused. The said complaint was also endorsed to the Director, Archeology and Museums, Rajasthan. It was requested that the State should acquire the said fort and stop the misuse of the premises. A year later, on 16-3-1974, the Director Archeology and Museums also submitted his inspection report to the Assistant Secretary of the Chief Minister. According to the said report the erstwhile

royal family of Chomu had sold the fort for a nominal price to the petitioners. It was also claimed that the petitioners were misusing the buildings and structures of the fort. Two years later, on 15-4-1976, the Director Archeology and Museums recommended to the State to protect the said fort under the provisions of the State Act.

While the recommendation was pending with the State, the petitioners sold off part of the outer wall ("the Parkota"), the ditch (the khai) surrounding the fort and part of the land inside the fort to the Krishi Upaj Mandi, Chomu for establishing the Krishi Upaj Mandi under the Rajasthan Agricultural Product Market Act, 1961. Thus, the Krishi Upaj Mandi, established by the government, bought the aforementioned parts of the fort. Interestingly, the Krishi Upaj Mandi, run by the government, subsequently demolished part of the rampart ("the Parkota"), filled the ditch, constructed road thereupon, and constructed shops for the benefit of the traders of the market. Hence, the Mandi—a government run organization, itself began the systematic demolition of the fort. But, taking the recommendation of the Director Archaeological and Museums in earnest, the State, using its power under Section 3 (4A) of the State Act, declared the fort as a "protected monument" vide notification dated 28-3-1978 published in the Rajasthan

Gazette on 8-4-1978.

On 27-5-78, the petitioners filed their objections before the Commissioner-cum-Secretary, Department of Education, as at that moment the Department of Archaeological and Museums was under the Eduction Department. Vide letter dated 16-2-1981, the petitioners were informed that they should appear before the Education Minister on 28-2-81. However, when they appeared, no hearing took place. They were assured that the next date would be informed to them. Such an endorsement is made in the letter dated 16-2-81 (Ex.12). But, according to the Petitioners, they were never informed about the next date. It was only vide letter dated 16-9-1981, that the petitioners were informed that their objections were considered and dismissed by the Government.

Since the petitioners were aggrieved both by the notification and by the letter dated 16-9-1981, they filed a writ petition before this Court. Vide judgment dated 25-1-1996, this court allowed the writ petition. Thereupon, the State preferred an appeal before a Division Bench. Vide judgment dated 30-9-1996, the Division Bench dismissed the State appeal and confirmed the judgment of the Single Bench. Consequently, the State filed a SLP before the Hon'ble

Supreme Court. But, the Hon'ble Supreme Court remanded the case back to the High Court to be decided by a Division Bench. Hence, this petition before us.

Mr. Paras Kuhad, the learned counsel for the petitioners, has raised various contentions before us: firstly, the State did not have the power to declare the fort as a “protected monument” under the State Act. For, Section 2 (i) of the State Act while defining the term “ancient and historical monument”, excludes those “ancient monument as defined in the Central Act, to which the provisions of that Act apply for the time being.” According to Section 2 (a) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (henceforth to be referred to as the Central Act, for short), the term “ancient monument” means “any structure, erection or monument, or any tumulus or place or internment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and...” According to the learned counsel, since the fort is more than hundred years old, it is included in the definition of “ancient monument” as given in the Central Act. Thus, ipso facto it is excluded from the definition given in the State Act. Hence, the State Act does not cover the fort.

Therefore, the State could not have declared the fort as “protected monument” under the State Act.

Secondly, even if it were held that the State has the power to declare the fort as a protected monument, it has to follow the procedure prescribed in the State Act. Section 3 of the State Act prescribes an elaborate procedure for declaring a monument as protected. However, the procedure has not been followed. Section 3 (4A) contains the emergency power for declaring a monument as protected. However, even the procedure prescribed in sub-section (4A) has not been followed. Therefore, the impugned notification is invalid and illegal.

Thirdly, Section 3 (4A) of the State Act requires the State to be satisfied “with respect to any monument, archaeological site or antiquity, that there is immediate danger of its removal or destruction.” The satisfaction and the reasons thereof have to be recorded in the notification itself. However, in the instant case, the State has neither recorded the possibility of “immediate danger of its removal or destruction”, nor stated its reasons for such a satisfaction. Hence, the notification is in violation of Section 3 (4A) of the State Act.

Fourthly, the fort was bought in 1972, the complaint about its alleged misuse was made in 1973, the Director had submitted his report in 1974, in 1976 the Director had recommended that the fort be declared as “protected monument”, meanwhile the Krishi Upaj Mandi had demolished the outer walls of the fort. Despite the lapse of six years from the date of sale of the fort, it is only in 1978 that the notification was issued. The emergent power under Section 3 (4A) was invoked on the ground of “immediate danger of its removal or destruction” to the fort. However, such “an immediate danger of its removal or destruction” can not be said to exist after six years from the date of sale of the property and after two years of the recommendation made by the Director. Thus, the State is abusing the power given to it by the State Act. It is, obviously, a case of colorable exercise of power.

Fifthly, the terms “ancient and historical monument”, “antiquity” and “archaeological site” have been defined differently under Section 2 of the State Act. Therefore, while classifying the fort, the State is required to specify the category in which the structure would fall. However, the State has used all the three terms, namely “ancient monument”, “antiquity” and “archaeological site”, in the impugned notification,

without any distinction. Hence, the State has not applied its mind to see under which category the fort falls. Thus, the notification suffers from the virus of non-application of mind.

Sixthly, according to Section 3 (4A) of the State Act, an opportunity of hearing has to be given to the persons interested in the monument. However, no such opportunity was given to the petitioners. Only vide letter dated 16-9-81, the petitioners were informed that the government has rejected their objections. Hence, their objections were rejected without hearing the petitioners. Thus, the State violated the principles of Natural Justice.

On the other hand, Mr. G. S. Gill, the learned Additional Advocate General of the State, has argued firstly, that under Art. 246 of the Constitution of India, the State is empowered to enact laws on subjects enumerated in List II and List III of the Seventh Schedule of the Constitution. According to Entry 12 of the List II, the State can enact laws dealing with “ancient and historical monuments and records other than those declared by or under law made by Parliament to be of National importance.” Moreover, under Entry 40 of List III, the State can enact laws for “archaeological sites and remains other than those

declared by or under law made by Parliament to be of national importance." Hence, under Entry 12 of List II and Entry 40 of List III—legislative fields demarcated for the the State legislature--the State can enact laws with regard to "ancient and historical monuments and archaeological sites and remains, other that those declared by or under law made by Parliament to be of national importance."

Secondly, according to the Central Act, unless a monument is declared to be of "national importance" under the Central Act, it is not deemed to be "protected monument". Thus, until it is so declared to be of "national importance", it continues of be subjected to the State Act. Merely because a monument is more than hundred years old, would not place it within the definition of "ancient monument" as given in the Central Act. The Central government would have to "declare" it to be of "national importance." Once the Central Government declares a monument to be of "national importance", it becomes a "protected monument". But, the Central government has not declared the Chomu Garh as an ancient monument of "national importance". Therefore, till such declaration is made by the Central government, the State has the power to declare the fort as "protected monument" under the State Act.

Thirdly, after it was brought to the notice of the State that the fort is being misused by the petitioner—after receipt of the complaint and of the report of the Director, Archaeological and Museum—the government felt there is “immediate danger of its removal and destruction.” Hence, it has rightly exercised its power under Section 3 (4A) of the State Act.

Fourthly, in the impugned notification the government has clearly stated that “it is of the opinion.” An opinion is formed only after the government has reached a satisfaction about the existence of a thing. Hence, the satisfaction is recorded in the impugned notification.

Fifthly, the scope of judicial review of the satisfaction of the government is a limited one. Since the opinion is a subjective one, the court cannot sit as a court of appeal over the satisfaction. Unless there is an allegation of mala fide, of arbitrariness, of non-application of mind, the court would not ordinarily interfere with the said satisfaction. It is for the petitioner to prove the existence of these factors. The court in its power of judicial review cannot ask the government to reveal the reasons for the formation of its opinion. In fact, the satisfaction is entitled to “great

weight”.

Sixthly, an opportunity of hearing was duly given to the petitioners. Their objections were rejected only after hearing them. Hence, the principles of natural justice were, indeed, followed. Hence, the requirement of Section 3 (4A) of the State Act has been fulfilled. The learned counsel has, thus, supported both the notification and the letter dated 16-9-81.

We have heard the learned counsels and perused the impugned notification and the letter.

India, an ancient civilization and a modern nation, is studded with ancient and historical monuments. The forts and the palaces, the temples and the mosques, the ruins of a university or of a city are part of our heritage. They are the achievements of our ancestors. These mute witnesses of our history testify to our grandeur, our glory, our concerns, our traditions, our culture. In stones and wood, in rocks and bricks, in ivory and clay, they have frozen the past for us: they have to be preserved for posterity. It is not only the duty of the State to conserve them, it is equally the fundamental duty of each citizen to preserve them. Thus, Art. 51 A (f) of the Constitution of

India enjoins the citizen “to value and preserve the rich heritage of our composite culture.”

While defining the legislative fields, Entry 67 of List I of the Seventh Schedule enables the Parliament to enact laws on “ancient and historical monuments and records and archaeological sites and remains declared by or under law made by Parliament to be national importance”. Likewise, Entry 40 in List III of the Seventh Schedule permits both the Parliament and the State Legislature to legislate on “archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance.” Entry 12 of List II of the Seventh Schedule of the Constitution of India, on the other hand, permits the State Legislature to enact laws about “...ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance.”

A conjoined reading of these Entries clearly show that both the Parliament and the State Legislature can enact laws about the ancient and historical monuments, about archaeological sites and about remains. However, Entry 12 of List II and Entry 40 of List III are subject to Entry 67 of List I of the Seventh Schedule of the Constitution of India.

Furthermore, while Parliament is enabled to deal with monuments of “national importance”, the State is enabled to control and preserve those monuments which are of importance within the state.

This is also borne out from the Central and the State Acts before us. The object of the Central Act is “to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects.” (Emphasis added). The State Act, on the other hand, states the object to be “to provide for the preservation, protection, upkeep, maintenance, acquisition and regulation of, and control over, ancient and historical monuments, and antiquities in the State of Rajasthan.” Thus, the State Act deals with those ancient and historical monuments which are withing the state of Rajasthan and have some importance for the state.

Prior to the coming of the Central Act, the Ancient Monument Preservation Act, 1904 covered the field. However, under the said Act, the Central Government could declare any monument to be “protected”, whether the said monument was of “national importance” or not. But such a

scheme led to confusion between the Central Government and the State Government. Hence, in order to limit the power of the Parliament, and to give more power to State Government, the Central Act was enacted. This is clear from the Statement of Object and Reasons, part of which is as under:

> *While the constitution has distributed the subject-matter under three different heads, the Act of 1904 governs all ancient monuments whether falling in the Central field or the State field, and vests all executive power in the Central government. The position of the existing law relating to ancient monuments is far from satisfactory. The present Bill purports to be a self-contained law at the Center which will apply exclusively to ancient monuments etc., of national importance falling under Entry 67 of List I and to archaeological sites and remains falling under Entry 40 in the Concurrent List. Simultaneously, the State Government would be advised to enact a similar law in respect of ancient monuments, etc., falling under Entry 12 in the State List. In this manner, the Central and the State fields will be clearly demarcated and the existing confusion and overlapping of jurisdiction arising from the Act of 1904 will be eliminated.*

Section 2 (j) of the Central Act defines the term “protected monument” as meaning “an ancient monument which is declared to be of national importance by or under this Act”. Section 4 empowers the Central government to declare an ancient monument to be of “national importance”. It prescribes the procedure for such declaration. Once an ancient monument is declared to be of “national importance”, ipso facto it becomes “a protected monument” according to

the definition of “protected monument”. The rest of the provisions of the Central Act lay down the provisions with regard to protection, acquisition, maintenance etc., of the protected monuments. Hence, the Central Act deals with only monuments of “national importance” which automatically stand as “protected monument” under the Central Act.

Meanwhile, the State Legislature can enact a law dealing with those ancient or historical monuments which have not been declared by the Parliament to be of “national importance”. Once a monument has been declared to be of “national importance” under the Central Act, it is out of the purview of the State Act. In the present case the petitioners have not placed any evidence to prove the fact that the Chomu Garh has been declared by the Parliament to be of “national importance” and hence a “protected monument” under the Central Act. Since the Chomu Garh has not been declared to be of “national importance” by the Parliament, the State is competent to declare the fort to be “protected monument” under the State Act.

The learned counsel for the petitioners has made much of the use of the word “defined” used in Section 2 (i) of the State Act. Section 2 (i) of the State Act while defining the term “ancient and historical monument” contains

an exception. It defines the term, but states that the term "does not include an ancient monument as defined in the Central Act, to which the provisions of that Act apply for the time being." (Emphasis added). The definition of "ancient monument" contained in the Central Act and of "ancient and historical monument" contained in the State Act are similar in nature. The distinguishing feature between the two definition is the element that if the monument is more than hundred years old, it comes within the Central Act. According to him, since the fort is more than hundred years old, it automatically falls within the definition of "ancient monument" as contained in the Central Act. According to the learned counsel even if the fort has not been declared to be of "national importance", the mere fact it is more than hundred years old, would make it an "ancient monument" as defined in the Central Act. Therefore, the fort comes within the purview of the Central Act and not of the State Act.

Section 2 (i) of the State Act reads as under:

> *"(1) ancient and historical monument" means any archaeological building, structure, erection or monument or any tumulus, tomb or place of interment or any cave, rock-sculpture, rock-painting or sculpture of or on stone, metal terracotta or other immovable object or any inscription or monolith, which is of historical, archaeological or artistic importance, interest or value, and includes -*

(a) any remains thereof,

(b) the site thereof,

(c) the portion of land adjoining such site which may be necessary or required for the preservation, protection, upkeep and maintenance of the same, and

(d) the means of access thereto and of convenient inspection and repairs thereof,

but does not include an ancient monument as defined in the Central Act, to which the provision of that Act apply for the time being. (Emphasis added).“

On the other hand, Section 2 (a) of the Central Act defines the term “ancient monument” as under:

“ancient monument” means any structure, erection, or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes-

(i) the remains of an ancient monument,

(ii) the site of an ancient monument,

(iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(iv) the means of access to, and convenient inspection of, an ancient monument.

A conjoined reading of the two provisions does make the contentions of the learned counsel appear to be strong at the first blush. After all, Section 2 (i) of the State Act ousts those “ancient monument as defined in the

Central Act.” However, at a closer look, the contention is without merit. Firstly, the section further requires “to which the provisions of that Act apply for the time being.” The provisions of the Central Act apply only to those ancient monuments which have been declared to be of “national importance.” Hence, merely because a monument is more than hundred years old would not automatically make it “an ancient monument” under the Central Act. In order for the Central Act to apply to the said monument, it would have to be declared as an ancient monument of “national importance.” Thus, a declaration by the Parliament is a sine quo non condition before a monument comes within the purview of the Central Act. As stated above, the Parliament has not declared the Chomu Garh to be of “national importance”. Therefore, the Central Act is not applicable to the fort.

Secondly, if every monument older than a hundred year is ipso facto included in the Central Act, then they need not be declared to be of “national importance.” Such an interpretation would dilute Entry 12 in List II and Entry 40 in List III. For, the words “other than those declared by or under law made by Parliament to be of national importance” used in these Entries would be meaningless. Further, it would also dilute the scope of the State Act. For, the State

Act would be applicable only on those “ancient and historical monument” which are less than a hundred years old. It would, certainly, lead to an absurd situation. A monument less than a hundred year cannot be termed as “ancient”. According to the Webster's Third New International Dictionary, the word “ancient” means “belonging or relating to a remote period to a time early in history, or to those who lived in such a period or time.” Considering the fact that India is a one of the oldest civilizations, the word “ancient” would mean “centuries old” or historically speaking “belonging to Pre-Muslim period of our history.” Hence, the word “ancient” would lose its meaning if the State Act were it to deal with only those monuments which are less than hundred years old.

In the case of State of Maharashtra v Nanded Parbhani Z. L.B.M. V. Operator Sangh ((2000) 2 SCC 69) the Hon'ble Supreme Court held that “a construction, which requires for its support an additional substitution of words or which results in rejection of words as meaningless has to be avoided.” In the case of Rakesh Wadhawan & Ors v Jagdamba Industrial Corp. & Ors ((2002)5 SCC 440), the Apex Court held that in case of ambiguity provision should be so read as to avoid hardship, inconvenience, injustice, absurdity and anomaly. The interpretation placed by the learned

counsel would certainly lead to absurdity. In the case of State of Maharashtra v Marwanjee F. Desai & Ors ((2002) 2 SCC 318) the Apex Court has deprecated the practice of picking up of a word from any particular provision and of analyzing it in a manner contrary to the statement of object and reasons stated for the enactment of the law. As stated above, the Central Act deals with those monuments which have been declared as of “national importance”. Therefore, the emphasis on the word “defined” as placed by learned counsel would be contrary to the object and statement of the Central Act. Therefore, it is unacceptable.

A holistic reading of the relevant Entries of List I, II and III of the Seventh Schedule of the Constitution of India and of the provisions of the Central and State Acts make it abundantly clear that the Central Act applies to those “ancient monument” declared to be of “national importance.” Hence, such monuments stand “protected” under the Central Act. The State Act applies to those “ancient and historical monument” which are within the state and have not been declared to be of “national importance.” Since the Chomu Garh has not been declared to be of national importance, the State Act shall apply.

The declaration of a monument as “protected

monument” has certain consequences. Such a declaration adversely affects the rights of the persons who have some interest in the monument. Since the rights are adversely affected, Section 3 of the State Act prescribes the procedure to be followed before declaring the monument as “protected”.

Section 3 reads as under:

“Power to declare monuments etc. to be protected.- (1) The State Government may declare for the purposes of this act -

(i) any ancient or historical monument to be a protected monument, or

(ii) any archaeological site to be a protected area, or

(iii) any antiquity to be a protected antiquity.

(2) Before making any such declaration as is referred to in sub-section (1), the State Government shall, by notification in the Official Gazette, give two months' notice of its intention to do so and a copy of such notification along with a statement of the reasons for which such declaration is proposed to be made, shall be affixed in a conspicuous place at or near the ancient or historical monument or the archaeological site which is proposed to be declared as protected or on or near the place where or in which such monument or the antiquity proposed to be declared as protected is for the time being.

(3) Any person interested in any such monument, archaeological site or antiquity may, within two months after the publication of such notification in the Official Gazette, object to the proposed

declaration.

(4) On the expiration of the said period of two months the State Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette -

1. an ancient or historical monument to be a protected monument, or

2. an archaeological site to be a protected area, or

3. an antiquity to be a protected antiquity.

((4A) Notwithstanding anything contained in sub-section 92) and (3), where the State Government is satisfied with respect to any monument, archaeological site or antiquity, that there is immediate danger of its removal or destruction, it may instead of proceeding under the said sub-sections, by notification in the Official Gazette and for reasons of its satisfaction to be recorded in such notification, forthwith make a declaration under clauses (i), (ii) or (iii), as the case may be, of sub-section (4) in respect of any such monument, archaeological site or antiquity :

Provided that any person interested in any such monument, archaeological site or antiquity may, within two months after the publication of such notification object to the declaration so made and the State Government after giving to such person an opportunity of being heard, may be order in writing dismiss the objection or withdraw the notification.)

5. A notification published under sub-section (4) (or under sub-section (4A)) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient or historical monument, archaeological site or antiquity to which it relates is a protected monument, a protected area or a protected antiquity for the purposes of this act.”

Section 3 can be divided into two parts: the first part comprises of sub-sections (1), (2), (3) and (4) the second part deals with sub-section (4A). While the first part deals with the regular procedure for declaring the ancient monument to be “protected monument”, the second part deals with emergent provision for declaring the monument to be “protected”. According to sub-section (2) the government must give two months notice through the Official gazette of its intention to declare the monument as “protected”. It must also affix a copy of the said notification along with a statement of the reasons for which such declaration is proposed to be made. According to sub-section (3), the persons having interest in the said monument shall be given an opportunity to voice their objection to such declaration intended to be made. Thus, an opportunity of hearing has to be given prior to making of the declaration. It is only after considering the objections, if any, that the government shall declare the monument as “protected” through the Official Gazette. Thus, sub-sections (3) and (4) envisage a pre-decisional hearing.

On the other hand, sub-section (4A) prescribe an emergent provision for declaring the monument to be “protected”. The sub-section requires the State Government to be “satisfied” that there is “immediate danger of its

removal or destruction” and after recording its reasons in the notification, forthwith declare the monument to be “protected”. The proviso provides a post-decisional hearing to be given to those persons having some interest in the monument. It further enjoins the State to give an opportunity of hearing to such persons. And to dismiss the objection or to withdraw the notification after such hearing, as the case may be.

The first requirement of Section 3 (4A) of the State Act is that the government should be “satisfied” about the existence of immediate danger to the removal or destruction of the monument. The scope of judicial review in matter of “satisfaction” of the government has attracted the attention of the Apex Court on numerous occasions. Section 17 (4) of the Land Acquisition Act, 1894 is similar to the Section 3 (4A) of the Act as both deal with emergent provisions: while the former deals with emergent acquisition of the land, the latter deals with the declaration of a monument as “protected” on an emergent basis. Both the sections require the “satisfaction” of the government. While dealing with the “satisfaction” of the government, in the case of First Lad Acquisition Collector and Others v Nirodhi Prakash Gangoli and Another ((2002) 4 SCC 160), the Hon'ble Supreme Court held as under:

> The question of urgency of an acquisition under Sections 17 (1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. Therefore, when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Sections 17 (1) and (4) of the Act, and issues notification accordingly, the same should not be interfered with by the court unless the court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision taken by the appropriate authority was mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the authorities concerned. If an order invoking power under sections 17 (4) is assailed, the courts may enquire whether the order has been passed by non-application of mind. Any post-notification delay subsequent to the decision of the State Government dispensing with an enquiry under Section 5-A of by invoking powers under Section 17 (1) of the Act would not invalidate the decision itself specially when no mala fide on the part of the Government or its officers are alleged. Though the satisfaction under Section 17 (4) is a subjective one and is not open to challenge before a court of law, except for the grounds in already indicated, the said satisfaction must be of the appropriate government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Government that there was urgency, even though not conclusive is entitled to great weight.

Similarly, in the case of Union of India and Ors. V Ghanshyam Dass Kedia and Ors. ((1996) 2 SCC 285, the Hon'ble Supreme Court held, “ It is subjective satisfaction of the Government based on the material on record. The High Court is not a court of appeal over subjective satisfaction and the opinion of the Government is entitled to great

weight”.

Thus, the scope of judicial review of subjective satisfaction of the government is a limited one. While considering the existence of an emergent situation for the declaration of the monument as “protected monument”, the government has to be given a free play at the joints. Unless there is an allegation of mala fide, unless the decision has been made on the basis of irrelevant considerations, unless it is patently unreasonable, the satisfaction is not to be interfered with. In fact, such a satisfaction is “entitled to great weight”.

The learned counsel for the petitioner has not alleged any mala fide on behalf of the Government. According to him, the Government did not have enough material to come to the conclusion that the emergent power under Section 3 (4A) of the Act has to be invoked. However, the contention is without force. Immediately after the fort was sold, the Secretary of the Congress Committee, Chomu had submitted a complaint to the then Chief Minister pointing out that the fort was being misused. The Secretary had requested the Government to “acquire the fort”. On 16-3-1974, the Director, Archeology and Museums submitted his inspection report to the Assistant Secretary of the Chief Minister. It

was pointed out that the petitioners are misusing the building and structures of the fort. On 15-4-76, the Director recommended to the State to protect the said fort under the provisions of the State Act. Hence, the Government had ample reasons for being satisfied about the need to invoke its power under Section 3 (4A) of the Act. Once the satisfaction has been reached legally, this court can neither sit as a court of appeal over the satisfaction, nor substitute its satisfaction for that of the Government.

The second requirement of Section 3(4A) of the State Act is for the government to record its reasons for such satisfaction in the notification itself. The impugned notification reads as under:

शिक्षा (ग्रुप-4) विभाग

अधिसूचना

जयपुर, मार्च 28,1978

संख्या एफ 6 (26) शिक्षा-5/74/ग्रुप -4: चूंकि राजस्थान सरकार की यह राय है कि निम्नलिखित अनुसूची में निर्दिष्ट प्राचीन स्मारक/स्थल/वस्तुएं राजकीय महत्व की है तथा इनके क्षतिग्रस्त एवं विकृत कर दिये जाने की पूर्ण अंशका है। अत: राजस्थान, पुरावशेष स्थान तथा प्राचीन वस्तु अधिनियम, 1961(राजस्थान अधिनियम संख्या 19 सन् 1961) की धारा 3 की उपधारा 4(ए) के तात्पर्य एवं प्रयोजन के अन्तमर्गत एतद् द्वारा तत्काल 'रक्षित', होना घोषित करती है।

इस विज्ञप्ति के जारी होने के पश्चात दो माह के अन्दर-अन्दर इन प्राचीन वस्तुओं में हित रखने वाले किसी व्यक्ति द्वारा की गई आपत्ति पर सरकार द्वारा विचार किया जायेगा।

अनुसूची

क्र.सं.	प्राचीन वस्तु का नाम तथा वर्णन	स्थान	जिला	महत्व
चौमू का किला		चौमू	जयपुर	यह 18 वी शताब्दी में निर्मित राजस्थानी दुर्ग परम्परा (परकोटा व खाई सहित) (संरचना) का प्राचीन स्मारक है तथा तत्काल संरक्षण योग्य है।

कृपा शंकर रस्तौगी,
शिक्षा आयुक्त एवं शासन सचिव।"

A bare perusal of the notification reveals that the government has clearly stated that “the fort is of importance to the State, that there is likelihood of of its destruction and removal”. Hence, ample reasons have been mentioned in the notification for the State to invoke its power under Section 3 (4A) of the Act. In fact, it is the duty of the State to preserve the culture and heritage of the nation. As stated above, such a fort is part of our

heritage. It is an example of fort architecture of Rajasthan. Since it is a mixture of Hindu and Islamic architecture, it is a symbol of our composite culture and of our unity in diversity. Therefore, it should be preserved for posterity. Thus, the State has legally invoked its power for the preservation of the fort.

The third requirement of Section 3 (4A) of the State Act is that a post-decisional hearing has to be given to the persons having some interest in the monument. According to the petitioners, vide letter dated 16-2-81, they were informed to be present before the Education Minister for a hearing on their objections on 28-2-81. However, no effective hearing occurred on that date. Instead, they were told that they will be informed about the future date. Such an endorsement is made on the letter dated 16-2-81. According to the petitioners, no further communication was sent to them about next date of hearing of the case. Even the Learned Additional Advocate General could not show any subsequent communication to the petitioner whereby they were informed of the next date of the hearing. According to him, they were heard by the Special Secretary Education and the Director, Archeology and Museums on 20-2-79. But the date of 20-2-79 is a date anterior to 28-2-81. Therefore, there is no evidence to

prove that the petitioners were heard after 28-2-81. Without giving any further hearing, without giving the petitioners a chance to substantiate their objections, without following the procedure contained in Section 3 (4A) of the State Act, vide letter dated 16-9-81, the objections were rejected. The letter dated 16-9-81 does claim that “the parties and their lawyers were heard”, but such a claim is belied by the facts which have been canvassed before us. Needless to say, the petitioners' objections have been dismissed without any effective hearing as contemplated in Section 3 (4A) of the State Act. Thus, the principles of natural justice have been violated. Hence, the letter dated 16-9-81 is illegal and unsustainable.

Therefore, while we uphold the notification dated 28-3-78, we direct the Government to give the petitioners an opportunity of hearing within one month of the receipt of the certified copy of this judgment. Since the case has been hanging fire for the last two-and-a-half decades, we also direct the Government to decide the matter within three months from the first date of hearing. Hence, the petition is partly allowed. No order as to costs.

(R.S. Chauhan, J.) **(S. N. Jha, C.J.)**